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March 8, 2008

Chair Helen Thomson and
Yolo County Board of Supervisors
615 Court Street
Woodland, CA 95695

RE: Revised Old Sugar Mill project and Addendum to EIR
Board of Supervisors Agenda, March 11, 2008, 1:30 p.m.

Dear Chairperson Yamada and Honorable Supervisors Chamberlain, McGowan,
Rexroad, and Thomsen,

I represent the Concerned Citizens of Clarksburg, an unincorporated association of Clarksburg residents who have concerns about the proposed "Old Sugar Mill" Specific Plan at Clarksburg. My clients must object to the revised Specific Plan, proposed Addendum to EIR, and related approvals. As previously stated, my clients have no objection to the renovation and current commercial uses of the old Sugar Mill building and similar uses on the site, which compliment and support the area's agriculture.

The Staff Report, January 24, 2008, summarizes the history of this matter, although its assertion (p. 13) that the EIR is legally presumed to be valid under CEQA, is incorrect.¹

We incorporate into this letter all relevant written and oral comments and other documents previously submitted by any person pertaining to the original Environmental Impact Report and Project, as well as those submitted in connection with the proposed revision and Addendum to the EIR.

¹ The Delta Primary Zone Resource Management Plan is incorporated into County's General Plan. (Govt Code § 29763-29765). A CEQA matter is not ripe for judicial review until all administrative avenues for relief are exhausted and the administrative appeals completed. Ordinances approving projects are not effective for 30 days. The appeal to the DPC was filed within 30 days. When an appeal is filed to the DPC, the local project approvals are not effective until the DPC determines that the Project is consistent with the Delta Protection Act and Resource Management Plan. (Public Resources Code §29771). The administrative appeal to the DPC was successful and as a result there is not an approved project. A CEQA action cannot be entertained by the Courts if there is no approved project. A new NOD will need to be filed for the revised Project if it is approved by the Board of Supervisors.

A. The Revised Old Sugar Mill Project Remains Inconsistent with the Delta Protection Act and the Delta Land Use Management Plan

Please refer to the excellent letter of Earthjustice on behalf of NRDC, dated March 6, 2008, pp. 2–5. Please also review DWR’s “*A California Challenge – Flooding in the Central Valley, A Report to the California Department of Water Resources, State of California, October 15, 2007*,” by an independent panel of nationally-recognized experts on flood hazard and floodplain management commissioned by the California Department of Water Resources, and the report of the Blue Ribbon Task Force 2008, “*Our Vision for the California Delta, January 29, 2008*,” both attached to the letter of Earthjustice submitted to the Supervisors on March 6, 2008. The comments below pertaining to flooding and levee issues are also relevant to the Delta Protection Act issues.

B. CEQA Requires A Subsequent or Supplemental EIR.

The Staff Report, pp. 18-19, summarizes the requirements of CEQA Guidelines 15161 - 15163 that would require a Subsequent or Supplemental EIR. A Subsequent or Supplemental EIR is required for the revised Project. Reasons include but are not limited to, the following:

1. Recent deep excavation on the Project site, letter of Central Valley Flood Protection Board

During the Fall of 2007, after certification of the original EIR, the Applicant excavated a large pit on the Project site that appears 20 feet deep and approximately 200 feet from the landside toe of the levee (my clients did not have access to measure distances), which had previously been filled with lime deposited by the former Delta Sugar Mill. The material excavated appeared to be lime. This was reported to Yolo County in December 2007, which advised that it did not violate any County ordinance. It had been earlier reported to RD 999.

Jay Punia, Executive Director of the Central Valley Flood Protection Board, wrote a letter to the Project Applicant, dated January 24, 2008, attached hereto as **EXHIBIT A**, which states, in part:

“Your excavation to remove lime in your property near the federal project levee concerns us greatly. This excavation *could create a seepage path under the levee, potentially leading to levee failure* and subsequent flooding.” (Emphasis added).

“As discussed with you during the inspection by my staff and Mr. Webber [Manager of RD 999], I am formally asking you to stop your lime excavation until further notice. You may, however, continue - - - surface scrapping to remove lime in other parts of your property. I am also requiring that you conduct a geotechnical investigation on your property to determine that the excavated areas

do not pose a threat to the integrity of the project levee. Should the investigation determine that there is a threat, you must contact us immediately and provide a plan to alleviate the conditions. The investigation should be conducted by a California registered geotechnical engineer. Please submit the geotechnical report to me no later than March 31, 2008.”

Adopted Mitigation Measure 4.7.8.c of the original Old Sugar Mill project states:

“Pursuant to the recommendation of the Kleinfelder study (Appendix LEVEE-1) all development allowed under the specific plan shall implement the following: 1) No permanent unlined excavations shall occur within 500 feet of the landside levee toe.” (MM 4.7.8c, emphasis added).

No geotechnical testing has been performed. Applicant advised on March 5 that he has retained an unidentified engineer who is evaluating the situation.

The Staff Report and proposed Addendum to the EIR do not disclose the excavation, the concerns of the Central Valley Flood Protection Board, or the potential flooding hazard created by the excavation. The fact that the Applicant may have excavated lime deposited as a by-product of the former Delta Sugar Mill, rather than native soil, is irrelevant to the hazard of underseepage and potential for levee failure as stated by the Central Valley Flood Protection Board.

The Applicant’s excavation creates a additional risk of levee failure and deep flooding of the Project. Applicant seeks Project approval before he has remediated the additional flood hazard created by Applicant's excavation, so the pit and potential increased flood hazard posed by the pit must be addressed in the environmental review of the project. Therefore a Supplemental or Subsequent EIR is required by CEQA Guideline 15162 that addresses the excavation, its probable impacts, and timeline and method of remediation that would prevent the hazard.

An alternative would be for the Board of Supervisors to postpone all action on the Revised Project and Addendum until after the Applicant has resolved this situation and filled the pit to the satisfaction of the Central Valley Flood Protection Board and the County, thereby alleviating the probable increased flooding hazard posed by the existence of the pit near the levee. This would avoid the need for a Supplemental EIR which addresses the potential flooding issues in connection with the pit.

Deferral of consideration of the Project by the Board until after the issue of the pit is resolved would also be an incentive for prompt action by Applicant. Approval of the Project now, prior to filling of the excavatoin, could reduce Applicant’s incentive to remedy the problem if the Project were subsequently disapproved by the DPC or does not move forward due to financial, market, or other reasons.

2. Recent Corps determination that part of the RD 999 levee offers less than 100-year flood protection.

See **EXHIBIT TWO**, billing statement by RD 999 to residents, dated 11/9/07, which includes an undated notice by RD 999 to property owners stating that the Corps has determined that RD 999's levees in Solano County provide less than 100-year flood protection, and that the entire RD 999 district will be mapped into the flood plain by FEMA. This was not disclosed in the Staff Report or the Addendum.

This recent determination by the Corps is new information of substantial importance which was not known when the EIR was certified, and shows additional significant effects more severe than those show in the EIR (by confirming what was then suspected but not then proved) Therefore, a Subsequent or Supplemental EIR is required which discloses and addresses this new information.

NOTE: The river surface water elevation at the Solano County location, downstream from Clarksburg, is lower than the river surface elevations next to and upstream from the Project site, so floodwaters at Clarksburg from a 100-year levee failure in Solano County would not rise to the same elevation as floodwaters from a 100-year levee failure next to or upstream from Clarksburg.

3. The propose modification of MM 4.7.7a requires a Subsequent or Supplemental EIR

A Subsequent or Supplemental EIR is required where modification of a mitigation measure would increase the severity of a significant impact. (Public Resource Code §21166, CEQA Guideline §15162). By adopting a different method of determining the Base Flood Elevation ("BFE") and requiring the habitable area be elevated one foot above the BFE, the habitable area "probably" will be elevated 11 to 13 feet, according to the Staff Report (p. 34). The County's engineer could also conclude that much less elevation is needed. Elevation of homes to 11 feet above grade creates the illusion of safety from the 100-year flood event when in fact there is no evidence that the homes could withstand the force of currents which would accompany a deluge from a failure of the Sacramento River levee in the vicinity of the Project, even if the habitable area were above the flood level (until the flood current demolishes the house).

By creating the illusion of complete safety against the 100-year flood, revised MM 4.7.7a may encourage persons to buy homes on the Project site which they might otherwise reject if the habitable areas were elevated only four feet above ground, as allowed by the original MM 4.7.7a, yet they may be no safer with the habitable area elevated 11 feet above grade if the force of the current accompanying a flood event is enough to demolish the structures.

The construction standards of the Yolo County Flood Hazard Reduction Ordinance, § 8-3.501 provides no objective standards which assures that structures will be built strongly enough to ensure adequate protection against the force of the current accompanying flooding from a levee break, other than an engineer's subjective conclusion that the standard is met.

4. A Supplemental or Subsequent EIR is required which considers new best available information, and new standards for adequacy of flood protection adopted after certification of the original EIR.

Subsequent to the certification of the original EIR, the California Department of Water Resources released the “*A California Challenge – Flooding in the Central Valley, A Report to the California Department of Water Resources, State of California, October 15, 2007,*” a report by an independent panel of nationally-recognized experts on flood hazard and floodplain management commissioned by the California Department of Water Resources, and the report of the Blue Ribbon Task Force 2008, “*Our Vision for the California Delta, January 29, 2008,*” both attached to the letter of Earthjustice submitted to the Supervisors on March 6, 2008.

In addition, there is substantial new information available about climate change and its probable effects on flooding and flood hazard during the lifetime of the Project. See letter of Earthjustice, March 6, 2008, pp. 6-8, and list of documents attached thereto. The State of California has acknowledged the existence and effects of climate change in its landmark legislation, SB 97, adopted after the original EIR was certified.

New Water Code Section 9602(i), part of the Central Valley Flood Protection Act of 2008, recognizes that "Urban level of flood protection" means the level of flood protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year. It is quite clear that the State no longer regards the 1-in 100 chance of flooding in any given year (the 100-year flood standard) as adequate for projects such as Sugar Mill.

C. The Addendum And Original EIR Fail To Address The Effect Upon Homes And Structures Of The Lateral Force Of The Currents Accompanying Flooding That Would Occur From A Levee Break In The Vicinity Of The Project Site During Base Year (Eg: 100-Year) Surface Water Elevations.

Compliance with revised MM 4.7.7a would "probably" require elevation of the habitable portions of homes to one foot above the FEMA Base Flood Elevation, estimated at 11- 13 feet above grade. (Staff Report p. 34). There is no discussion about whether the elevated structures could reasonably be expected to withstand the lateral force of the current of a deluge from a Sacramento River levee break near the Project. Aerial photos of the New Orleans Katrina flood showed that homes a considerable distance from levee breaks were partly or completely demolished by the force of the current.. The standards of

construction of the Yolo County Flood Hazard Reduction Ordinance, § 8-3.501 provide no objective standard which assures adequate protection against the lateral force of the current of the flooding that would result from a nearby levee break, other than an engineer's subjective judgement that it is okay.

To what standard, and with what materials, must Project structures be built to ensure that they are not demolished by the force of the flood current created by a levee breach next to the project site, at the 100-year river surface elevations? At what distance from a levee failure would homes be "safe" from the currents accompanying flooding?

D. Revised Mitigation Measure 4.7.7a is deferred mitigation which is impermissible under CEQA

Revised MM 4.7.7a states that habitable areas of residential units in the Project shall be constructed (1) with the floor level one foot above Base Flood Elevation ("BFE"), and (2) consistent with the County Flood Damage Prevention Ordinance MM 4.7.7

The BFE shall be that determined by FEMA when the residential building permit is issued, unless FEMA has not updated its BFE for Clarksburg at that time. If FEMA has not updated its BFE, a registered engineer shall determine the BFE using best available data, etc, and County shall consult with Federal and State agencies, etc, and apparently will make the final determination. The MM does not disclose who will select and pay the engineer. There is no standard for determining BFE other than the judgment of an engineer and the County.

The County Flood Damage Prevention Ordinance prescribes no objective standards of construction. It states certain subjective objectives, and leaves it to the subjective judgement of an engineer and the County to determine whether a structure meets these objectives. It is impossible for the Board or the public to determine, from the Ordinance and from the Project documents, the construction standards which will be required to "flood-proof" structures. There is not even a requirement that states the materials to be used for building to withstand the lateral forces of the current accompanying a flood,. It is impossible for the public or the Board to ascertain from the EIR and Mitigation Measure what will be required to avoid structural damage from flooding (including the force of the current).

MM 4.7.7a is not a real mitigation plan because the mitigation measures will be determined after Project approval. CEQA does not permit deferral of the determination of appropriate mitigation of significant environmental impacts, because CEQA requires that members of the public and other agencies must be given an opportunity to review and comment upon mitigation measures prior to consideration of Project approval. Certainly the BFE can be at least tentatively determined, based on existing knowledge of physical conditions and flood elevations, and the habitable portion of residential structures be required to be elevated to one foot above that BFE, subject to the proviso that the

determination of the BFE be updated, based on new information. prior to issuance of building permits.

Likewise, an engineer could determine at this time, based on best available information, the materials and specifications needed to achieve the general standards of the County Flood Damage Prevention Ordinance; and the Board, public, and other agencies could review and make an informed determination as to whether the measure will work. Again, the MM could provide that the building requirements for Project residences be updated, based on new information, prior to issuance of building permits.

CEQA requires that MM4.7.7a be sufficiently detailed to allow the Board, public, and other agencies to make an informed decision about whether it will actually work. There is sufficient information available about river surface elevations, probable flood depths, currents of floods, and engineering of buildings to withstand flooding, to devise mitigation measures that are much more detailed than current MM 4.7.7a. which would allow the Board, public, and other agencies to make an informed opinion about whether the proposed measures would work, subject to updating when building permits are issued. The Addendum violates CEQA because it failed to provide this information in MM 4.7.7a.

The Board should direct Staff and the Applicant to provide a plan to avoid for and mitigate the effect of floods which describes measures in as much detail as possible, with supporting documentation. This information and revised MM should be included in a Supplemental or Subsequent EIR

Respectfully submitted,

James P. Pachl

Exhibits:

- A. Central Valley Flood Control Bd, 1/24/08
- B. RD 999 notice

cc (e-mail) Davis Morrison, Principal Planner
Linda Fiack, Executive Director, DPC
Clients

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. LL40
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0653 FAX: (916) 574-0682



January 24, 2008

Mr. John M. Carvalho, Jr.
Carvalho-Stanich Properties, Inc.
35265 Willow Avenue
Clarksburg, California 95612

Dear Mr. Carvalho:

Thank you for allowing Mr. Dan Fua of my staff and Mr. Bob Webber, Manager of Reclamation District No. 999, to conduct an inspection of your property in the former Clarksburg Sugar Mill. Also, thank you for your time showing them the lime removal operation in your property.

The Central Valley Flood Protection Board is responsible for managing the floodway, reducing flood damage, protecting lands from floodwater, and controlling encroachment into floodplains and onto flood control works such as levees, channels, and bypasses. Your excavation to remove lime in your property near the federal project levee concerns us greatly. This excavation could create a seepage path under the levee, potentially leading to levee failure and subsequent flooding.

As discussed with you during the inspection by my staff and Mr. Webber, I am formally asking you to stop your lime excavation removal until further notice. You may, however, continue to conduct surface scraping to remove lime in other parts of your property. I am also requiring that you conduct a geotechnical investigation on your property to determine that the excavated areas do not pose a threat to the integrity of the project levee. Should the investigation determine that there is a threat, you must contact us immediately and provide a plan to alleviate the conditions. The investigation should be conducted by a California registered geotechnical engineer. Please submit the geotechnical report to me no later than March 31, 2008.

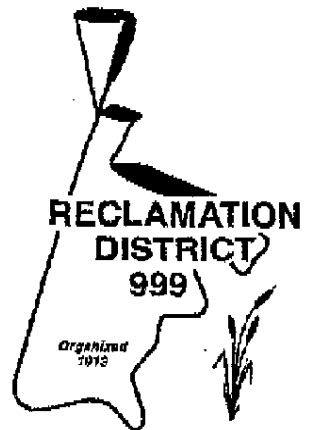
If you have any questions regarding this matter, please call Dan Fua of my staff at (916) 574-0698.

Sincerely,

Jay S. Punia
Jay S. Punia
Executive Officer

cc: Mr. Bob Webber, Manager
Reclamation District No. 999
38563 Netherlands Road
Clarksburg, California 95612-5003

EXHIBIT A



We continue to protect our water rights from the statewide forces that would reallocate our crop water requirements and rights to the ever-expanding urban demands, and perceived environmental priorities.

This year we have successfully operated a state of the art Fish Screen on our Sacramento River water diversion with funding received from the State and Federal government. This project is good for the fish and good for our ability to be permitted to continue irrigation ditch and lake maintenance while improving water quality and reliability.

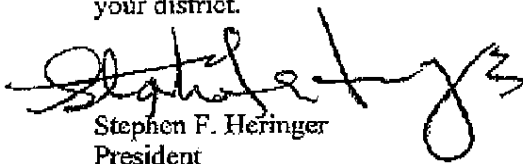
Your Board of Trustees and the District Management are constantly evaluating methods to lower the expense of operating the District. We have had a dry winter season 2006/2007 which required a lower than normal electrical consumption for our pumping plants. High Fuel cost and Government fees are still a major challenge, yet we were able to bring our expenses in under budget.

Levee engineering standards have increased in recent years and the Federal Emergency Management Agency FEMA is in the process of updating the Flood Plain Insurance mapping. Our levees are currently under review by FEMA. The U.S. Army Corp. has completed a levee inspection and survey of our levees. They have determined that our levees in Solano County provide less than 100 year flood protection. We suggest you consider purchase of Flood insurance before Reclamation District 999 is mapped into the Flood plain by FEMA.

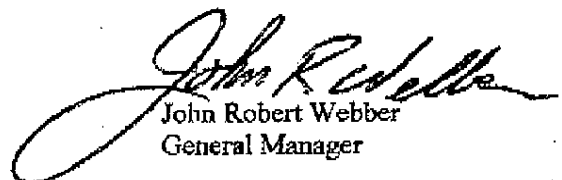
The U.S. Army Corp and State Department of Water Resources have completed four levee repair sites on the Sacramento River and Sutter Slough levees.

Flood preparedness is our top priority during the winter season. When the water level in the Sacramento River rises to 25 feet above sea level at the I street bridge, the Department of Water Resources notifies the Reclamation District that we are at **MONITOR STAGE**. This is the stage at which patrol of our levees becomes mandatory. The District implements the levee patrol plan. This requires adult volunteers to assist with the patrolling activities. We are preparing a roster of local adult volunteers to assist with levee patrol and flood fighting. Please call the District Office at 916-775-2144 if you are willing and able to help.

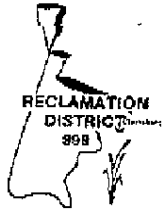
We welcome any thoughts and comments that you may have regarding the operation of your district.


Stephen F. Heringer
President

Sincerely,


John Robert Webber
General Manager

LEVEE, FLOOD CONTROL, DRAINAGE AND IRRIGATION ASSESSMENT



RECLAMATION DISTRICT NO. 999

38568 NETHERLANDS ROAD
CLARKSBURG, CA 95612-5003
(916) 775-2144

Statement Date: 11/10/2007

Due Date: 11/10/2007

Delinquent Date: 1/10/2008

ADDRESS CORRECTION REQUESTED

COUNTY	PARCEL NUMBER	ACRES	ASSESSMENT
YOLO		0.70	48.55
Total:			\$48.55

AS PRESCRIBED IN THE CALIFORNIA WATER CODE
DELINQUENCIES SUBJECT TO A 10% PENALTY PLUS INTEREST
OF 1.5% PER MONTH FROM DATE OF DELINQUENCY.

WHITE-LANDOWNER YELLOW-RETURN WITH PAYMENT PINK-DISTRICT COPY